

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

VECENTIE MORALES, JR.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case Number CIV-08-1282-C
	)	
JUSTIN JONES, Director,	)	
	)	
Respondent.	)	

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Petitioner filed the present action pursuant to 28 U.S.C. § 2254, challenging the validity of his original sentence and the revocation of a sentence. Consistent with the provisions of 28 U.S.C. § 636, this matter was referred to Magistrate Judge Bana Roberts. On May 13, 2010, Judge Roberts issued a Report and Recommendation (“R&R”) wherein she recommended Petitioner’s case be dismissed. Following the Court’s grant of an extension of time, Petitioner filed an Objection to the R&R. In that Objection, Petitioner properly raises only one objection – that Judge Roberts erred in finding ground two in his Petition was time barred. Petitioner argues Judge Roberts’ recommendation runs counter to case law which holds that jurisdictional issues cannot be waived.

As Judge Roberts noted, 28 U.S.C. § 2244 imposes a one-year limitations period for bringing a § 2254 challenge. In his Objection, Petitioner does not argue his claim was brought within this time period. The cases cited by Petitioner all address issues outside the scope of the AEDPA. That statute governs this claim and sets forth specific requirements

regarding the timeliness of a § 2254 petition. The Court finds no error in the determinations made by Judge Roberts and it is clear that Petitioner's claim is untimely. The Court also notes that Judge Roberts is correct in finding that Petitioner has failed to produce the evidence or argument necessary for application of equitable tolling.

Upon review of the R&R and Petitioner's Objection thereto, the Court finds the thorough and well-reasoned R&R should be and hereby is ADOPTED in full. This matter is DISMISSED with prejudice. A judgment shall enter accordingly.

IT IS SO ORDERED this 20th day of July, 2010.

  
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ROBIN J. CAUTHRON  
United States District Judge